relied upon, the vendee under the executory contract claimed to have acquired a title as against his vendor by adverse possession.[8] Here, plainly, the holding of the vendee was in subordination to the superior title of his vendor and not adverse to it. It does not follow that the written contract should not give color of title as against a stranger; and for the purpose of giving constructive possession,[9] or of satisfying a special statutory requirement for lands actually occupied,[10] it seems that it should. An Arkansas decision has, however, gone so far as to hold that a bond for title does not give sufficient color of title to warrant a statutory recovery against a third party, the real owner, for improvements made upon land under the *bona fide* belief that the obligor on the bond had good title. *Beasley* v. *Equitable Securities Co.*, 84 S. W. Rep. 224. It seems fairer to construe such statutes, founded, as they are, upon equitable principles,[11] so as to provide for the reimbursement of those who make improvements under a *bona fide* belief that they have a right to the land, whether their color of title be legal or equitable. To the language of the Arkansas statute indeed such a construction is especially applicable;[12] but in the interpretation of acts less explicit in terms, the same reasoning must apply.

ENFORCEMENT OF RESTRICTIVE COVENANTS. — The validity of agreements restricting the use of land is universally recognized. The burden is enforced against a grantee with notice on the ground that since he took with notice he must have paid less for the property than would otherwise have been the case. Consequently to allow him to avoid the obligation would be to enrich him unjustly at the expense of the covenantee.[1] The benefit runs in favor of all within the contemplation of the covenant. An owner of land may exact a restrictive covenant for his own personal advantage;[2] or he may secure it for himself as owner of the land, in which case it descends to each owner of the land.[3] Again, he may seek to benefit a grantee to whom he has already conveyed land.[4] But the most frequent case is when he sells land, laid out in lots, subject to a general restriction. Under such circumstances the purchasers are deemed to have entered into reciprocal agreements.[5] Since a prior grantee may sue a subsequent purchaser, his right rests, not on any assignment of the covenants, but on the fact that each one has purchased with reference to the general plan.[6] Yet

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[8] Brown *v.* Huey, 103 Ga. 448; Ormond *v.* Martin, 37 Ala. 598. After payment of the purchase money the vendee's possession is adverse to his vendor. Hart *v.* Bostwick, 14 Fla. 162.

[9] State Bank *v.* Smyers, 2 Strobh. (S. C.) 24; Jones *v.* Perry, 10 Yerg. (Tenn.) 59.

[10] Burdell *v.* Blain, 66 Ga. 169; *cf.* Fain *v.* Garthwright, 5 Ga. 6.

[11] Cox *v.* McDivit, 125 Mo. 358; Whitney *v.* Richardson, 31 Vt. 300.

[12] The Arkansas statute permits recovery "if any person believing himself to be the owner either in law or equity, under color of title has peaceably improved land." Other decisions denying recovery against his vendor to one in possession under a bond for title are based upon statutes requiring the claimant to be one holding adversely. See Seymour *v.* Cleveland, 9 S. Dak. 94; Kilburn *v.* Ritchie, 2 Cal. 145.

[1] See 17 HARV. L. REV. 174, 183.

[2] Equitable Co. *v.* Brennan, 148 N. Y. 661.

[3] Peck *v.* Conway, 119 Mass. 546.

[4] Barron *v.* Richard, 8 Paige (N. Y.) 351.

[5] Tallmadge *v.* East Bank, 26 N. Y. 105.

[6] Mulligan *v.* Jordan, 50 N. J. Eq. 363.

to allow a grantee the benefit it is not necessary, as is sometimes said, that the restrictive agreement must have entered into the consideration of his purchase. Once granted the intention to benefit such purchaser, knowledge on his part is unnecessary.[7] In finding the intention of the parties to the original agreement in all these cases, the courts naturally reach different results upon somewhat similar facts.

In a late New York case, the grantee of a portion of a lot of land which had originally formed part of a larger tract and had been bought at a sale, subject to a building restriction, sought to enforce the agreement against the grantee of another portion of the same lot, but was denied relief. *Lewis* v. *Ely*, 100 N. Y. App. Div. 252. The covenant could, doubtless, have been enforced by either of the parties against any grantee, in whole or in part, from the other original purchasers.[8] Equally, since the registry acts dispense with the necessity of actual notice, both parties would be bound to comply with the restriction at the suit of any grantee tracing his title from the other original purchasers. But the person from whom both plaintiff and defendant traced their title did not intend to bind successive owners of portions of his lot against each other. The agreements were entered into for the reciprocal benefit of the original purchasers and their successors. The result reached, though contrary to a New Jersey decision on a similar state of facts,[9] is the logical conclusion from the recognized rule that an owner of a lot subject to a restrictive agreement cannot enforce the restriction against a grantee to whom he has conveyed a portion of the lot.[10] The court, in its remarks, however, discloses the error into which one is likely to fall in adopting the New York conception of a restrictive agreement as an easement.[11] It speaks of the trend towards permitting only "the holders of the dominant estate and no other" to enforce "the burden of servitude," and questions the soundness of an earlier *dictum* that would allow a prior grantee an action against a subsequent purchaser. The proposition criticised, however, is supported by a square decision of the Court of Chancery,[12] and in no wise conflicts with the principal case. If it is manifest that such benefit was contemplated it should be enforced. Upon the test of intention each case is comparatively simple of solution, though there is, perhaps, a tendency in later cases to find that the covenant was entered into for the personal benefit of the covenantee.

DEGREES OF NEGLIGENCE. — Three theories have been advanced regarding degrees of negligence. The earlier English decisions, following the Roman law, classed negligence as slight, ordinary, and gross, varying conversely with the degree of care.[1] Within the last half-century two other views have been put forward. One suggests two degrees of negligence, (1) lack of that care required of the ordinary unskilled person, and (2) want of that care

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[7] See Rogers *v.* Hosegood, [1900] 2 Ch. 388, 407.
[8] See Schwoerer *v.* Boylston Market Ass., 99 Mass. 285.
[9] Winfield *v.* Henning, 21 N. J. Eq. 188.
[10] See King *v.* Dickson, 40 Ch. D. 596.
[11] 17 HARV. L. REV. 181.
[12] Barron *v.* Richard, *supra.*

[1] 1 Story, Bailm. § 17.